REMARKS

Applicant respectfully requests reconsideration. Claims 19-39 were previously pending in this application. No claim is amended or canceled herein. Claims 19-39 are still pending for examination with claim 19 being an independent claim. No new matter has been added.

Applicant has amended the related applications paragraph on the first page of the specification to reflect the earliest effective priority date of the claims currently pending. The claim of priority to US Patent Number 6,194,388 and US patent application number 08/276,358 has been dropped. An application data sheet reflecting this change has also been filed concurrently. The specification also has been amended to clarify the appropriate language related to government support. No new matter has been added.

Double Patenting

Claims 19-39 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 42-47, 49-53, 56, 57, 82-85, 90, 92, 94, 96, 98, 100, 102 and 103 of copending Application No. 09/337,584.

Enclosed herewith is a terminal disclaimer over the allowed claims of US Application No. 09/337,584. It is believed that the rejection should be withdrawn.

Applicant notes that in an IDS filed on July 17, 2009 in US09/337,584, Applicant informed the Office of a Board Order dated January 16, 2009 (Paper No. 19) from Interference No. 105,674. In that Order, the Board required that Applicant request the Examiner to determine whether an obviousness-type double patenting rejection should be made in US09/337,584 over US Patent 7402572. Applicant brings this Order to the attention of the Examiner in the instant patent application, because the instant patent application was filed to copy the claims of an issued US patent that was the subject of the Interference No. 105,674. Thus, the Office may also consider the issue of double patenting over US Patent 7402572 in the instant patent application.

Claims 19-39 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22, 23, 31, 32 and 34-37 of copending

Application No. 10/769,282 (now US 7,674,777). According to the Office, although US 10/769282 does not recite the treatment of asthma, the method steps are the same.

Initially, it is noted that claims 22, 23, 31, 32, and 34-37 are not included in the issued claims of US 7,674,777. Claims 22-24 and 31-38 of US 10/769,282 were subject to a restriction requirement and were canceled as withdrawn claims in the amendment dated September 24, 2007. Thus, the rejection is moot.

It is further noted that claim 19 was amended in response to the last Office Action to add the limitation that the oligonucleotide is administered to a subject having asthma. Since the pending claims require that the oligonucleotide be administered to a subject having asthma, the method steps are not the same as the prior pending method steps claimed in US 10/769,282. The claims that issued in US 7,674,777 are compositions of matter. The pending claims are patentably distinct over the claims of US 7,674,777.

Withdrawal of the nonstatutory obviousness-type double patenting rejection is respectfully requested.

Claims 19-39 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-29 and 31-33 of copending Application No. 10/894,862. The Office indicates that the claims of US 10/894,862 have been allowed.

Since the mailing of the Office Action, an RCE has been filed in US 10/894,862. The claims are no longer allowable. As such, the rejection is a provisional one because no allowable claims have been identified. If allowable subject matter is identified Applicant will address the merits of the rejection over the allowable subject matter.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. C1039.70073US00.

Dated: December 3, 2010

Respectfully submitted,

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